IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

SALAG RAM VS. STATE OF RAJASTHAN
[S.B.CRIMINAL APPEAL NO.114/1988]

S.B. Criminal Appeal No.114/1988 under Section 374 (2) Cr.P.C. against the Judgment dated 22.02.1988 in Sessions Case No.17/86, passed by Sh.M.C.Tailor Additional Sessions Judge, Bali.

DATE OF JUDGMENT : 1st February, 2007.

P R E S E N T

HON'BLE MR. CHATRA RAM JAT, J

Mr. Doongar Singh for the appellant.
Mr.L.R.Upadhyaya P.P.

BY THE COURT:

This appeal is directed against thejudgment and order dated 22.2.88 passed by the Additional Sessions Judge, Bali, whereby he convicted and sentenced accused appellant Salag Ram, after trial in Sessions Case No.17/86 [59/85] under Section 363 IPC and sentenced him to suffer imprisonment to undergo 4 years rigorous imprisonment along with fine of Rs.5,000/- and in default to further undergo one years rigorous imprisonment.

The prosecution story is woven like this:-

Accused appellant Salagram and prosecutrix Kamla (P.W.9) were doing labour work , therefore, they were knowing each other. It is further stated that brother of prosecutrix and Leela - sister of accused Saligram were 'Rakhi-bandh' brother,therefore, coming to their houses was also natural. Before ten days of the incident, accused, Mst.Heera and Leela at about 10 A.M. came to met with father of prosecutrixs' father Shiv Lal (P.W.5) and at that time prosecutrix, his father Shiv Lal (P.W.5) and mother Pabu (P.W.4) were present and accused persons requested to mother of the prosecutrix to allow prosecutrix Kamla to accompany them as in their home there is delivery (Japa) but the mother of the prosecutrix denied them yet they took her and when Kamla did not return till late night the Pabu P.W.4) mother of prosecutrix and Shiv Lal (P.W.5) search their daughter at house of Saligram's father which was closed. After two days accused Mst.Heera met them and on asking she stated that prosecutrix went to Jodhpur with Balia (Salig Ram) by train. Parents of the prosecutrix reached to Jodhpur in search but they did not find her. Thereafter father of the prosecutrix Shiv Lal lodged a written report of the incident to police which is F.I.,R. No.104 dated 11.12.83 (Ex.P-1) at Police Station Rani district Pali and police started search and recovered Saligram with Kamla at Udaipur. Kamla was examined by the medical officer who found

her aged about 15 to 16 years and X-Ray was also advised. According to report of Dr.Roshan Lal, Radiologist, age of Kamla was below 16 years.Thereafter statement of Kamla was recorded under section 164 Cr.P.C. wherein she stated that accused Saligram committed forcible sexual intercourse with her after showing knife and thereafter took her at Jodhpur and Udaipur and kept her in waiting room and thereafter in a rented house. After completion of investigation, police filed charge sheet before the Munsif & Judicial Magistrate,Desuri who committed the case to the Court of Sessions as the offences are under Section 366 and 366-A and 376 IPC.

Heard learned counsel for the appellant as well as learned P.P. and scanned the record.

The argument of the learned counsel for the appellant is that so far as conviction is concerned, he has nothing to state but looking to the facts and background of the case it reveals that the incident pertains dated 11.12.1983 and the accused appellant has been convicted under Section 363 IPC and punished for four years rigorous imprisonment alongwith fine of Rs.5,000/- When the statement under Section 313, Cr.P.C. recorded on dated 02.09.1986 the age of the appellant was 22-23 years and now after expiry of 20 years his age is more than 43 years and he remained in custody from 13.01.1984 to 08.02.1984 and 22.02.1988 to 09.03.1988 in all more than 42 days. So looking to the age and

antecedence and future prospects the leniency in punishment may be considered and appellant may be punished for the period already under gone.

Learned P.P. has requested that an appropriate order may be passed.

After going through the submissions and looking to the background and relations between the kidnapped -Kamla and the appellant and the fact that incident being 23 years back it is in the interest of justice if the appellant's sentence may be reduced for the period already undergone. His bail bonds are discharged.

In the result, the appeal is partly allowed as the conviction is upheld and sentence passed by the trial court is modified as indicated above.

[CHATRA RAM JAT],J.

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